

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

SEPRACOR INC.,

Plaintiff,

v.

DEY, L.P., and DEY, INC.

Defendants.

C.A. No. 06-113 (JJF)

C.A. No. 06-604 (JJF)

CONSOLIDATED

**REDACTED –
PUBLIC VERSION**

SEPRACOR INC.,

Plaintiff,

v.

BARR LABORATORIES, INC.,

Defendant.

C.A. No. 07-438 (JJF)

**DECLARATION OF PRESTON K. RATLIFF II IN SUPPORT OF
SEPRACOR'S REPLY BRIEF IN SUPPORT OF ITS
MOTION TO CONSOLIDATE THE DEY AND BARR CASES**

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Original Filing Date: February 29, 2008
Redacted Filing Date: April 7, 2008

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

SEPRACOR INC.,

Plaintiff,

v.

DEY, L.P., and DEY, INC.

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C.A. No. 06-113-JJF

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CONSOLIDATED CASES

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SEPRACOR'S REPLY BRIEF IN SUPPORT OF ITS
MOTION TO CONSOLIDATE THE DEY AND BARR CASES**

I, Preston K. Ratliff II, am associated with the law firm of Paul, Hastings, Janofsky & Walker LLP, counsel for Plaintiff, Sepracor Inc. ("Sepracor"). I make this declaration in support of SEPRACOR'S REPLY BRIEF IN SUPPORT OF ITS MOTION TO CONSOLIDATE THE DEY AND BARR CASES.

1. Attached as Exhibit 1 hereto is a true and correct copy of a document bearing Bates no. 1000005.

2. Attached as Exhibit 2 hereto is a true and correct copy of a January 30, 2008 e-mail from Preston K. Ratliff II, Sepracor's counsel to Elizabeth A. Leff, Dey's counsel.

3. Attached as Exhibit 3 hereto is a true and correct copy of a February 5, 2008 letter from Preston K. Ratliff II to Elizabeth A. Leff.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: 2/29/08

A handwritten signature in black ink, appearing to read "P. K. Ratliff II", written over a horizontal line.

Preston K. Ratliff II

CERTIFICATE OF SERVICE

I, hereby certify that on April 7, 2008, I electronically filed the foregoing with the Clerk of the Court using CM/ECF, which will send notification of such filing(s) to the following:

Steven J. Balick
John G. Day
Tiffany Geyer Lydon
ASHBY & GEDDES

Richard Hermann
MORRIS JAMES LLP

I also certify that copies were caused to be served on April 7, 2008 upon the following in the manner indicated:

BY E-MAIL AND HAND DELIVERY

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Chicago, IL 60601

/s/ Karen Jacobs Louden

Karen Jacobs Louden (#2881)

EXHIBIT 1

REDACTED

EXHIBIT 2

Ratliff, Preston K.

From: Ratliff, Preston K.
Sent: Wednesday, January 30, 2008 8:12 AM
To: Leff, Elizabeth; 'Robinson, Gail'
Cc: jday@ashby-geddes.com; sbalick@ashby-geddes.com
Subject: RE: Letter from Elizabeth Leff

Elizabeth,

I have your letters regarding expert depositions. As you know, the expert deposition period in the Dey case overlaps with that of the Breath case. We are working towards a suitable schedule for the experts, many of whom will be deposed in both cases. I am out of the office today, but I suggest that we have a telephone conference to work out an appropriate schedule. At any rate, I will also send you some information tonight on deposition dates.

Very truly yours,

Preston

From: Robinson, Gail [mailto:GRobinson@flhlaw.com]
Sent: Tuesday, January 29, 2008 2:54 PM
To: Ratliff, Preston K.
Cc: jday@ashby-geddes.com; sbalick@ashby-geddes.com; Leff, Elizabeth
Subject: Letter from Elizabeth Leff

Per Elizabeth Leff, I am forwarding the attached to you.

Gail Robinson

Frommer Lawrence & Haug LLP
1667 K Street, NW
Suite 500
Washington, DC 20006
(202) 292-1541

=====
This message originates from the law firm of Frommer Lawrence and Haug LLP. It contains information that may be confidential or privileged and is intended only for the individual or entity named above. No one else may disclose, copy, distribute, or use the contents of this message. Unauthorized use, dissemination, and duplication is strictly prohibited, and may be unlawful. All personal messages express views solely of the sender, which are not to be attributed to Frommer Lawrence and Haug LLP, and may not be copied or distributed without this disclaimer. If you receive this message in error, please notify us immediately at firm@flhlaw.com or call (212) 588-0800.

2/29/2008

EXHIBIT 3

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February 5, 2008

VIA E-MAIL AND FACSIMILE

Elizabeth A. Leff, Esq.
Frommer Lawrence & Haug LLP
1667 K. Street, NW
Washington, DC 20006

Re: *Sepracor Inc. v. Dey, L.P., et al*
Civil Action No. 1:06-cv-113-JJF

Dear Elizabeth:

This is in response to Dey's January 31, 2008 and February 1, 2008 letters regarding expert depositions.

As I explained during our telephone conversation on Thursday, January 31, 2008, the expert deposition period in the Dey case overlaps with the Markman proceedings and expert deposition period in the *Sepracor v. Breath* case, which is pending in the District of Massachusetts. Sepracor therefore is working towards a deposition schedule that takes into account Sepracor's obligations in the Dey and Breath cases, and is least burdensome to the experts who will be deposed in both cases.

Regarding Dey's expert witnesses, Sepracor did not decline to take Dr. Armstrong's deposition on February 21, 2008. I told you that because February 21 coincides with the Markman hearing in the Breath case, Sepracor would have to check to see if someone is available. Sepracor believes that someone is available to take Dr. Armstrong's deposition on one of the offered dates (February 21 or 22) and will confirm tomorrow. As for Dr. Ahrens, we are not available to take his deposition during the offered dates. Please let us know if Dr. Ahrens has any availability in March.

Regarding Sepracor's expert witnesses, Mr. Thwaite will be made available for deposition on February 28, 2008 in New York City. As for Dr. Agrawal, contrary to Dey's January 31, 2008 letter, I told you that Dr. Agrawal may be available February 20, 2008, but I would need to confirm. I have checked with Dr. Agrawal and he is not available February 20, 2008. Please let us know if Dey is available to take his deposition on February 15, 2008. Also, contrary to Dey's January 31, 2008 letter, I told you that I had available dates for Drs. Berger and Calhoun. You, however, said that you were not interested in hearing the dates because they were after the current close of expert discovery. We have reached out to Drs. Berger and Calhoun again for additional dates and hope to hear back shortly.

Paul Hastings

Elizabeth A. Leff, Esq.
February 5, 2008
Page 2

Further, please reconsider whether Dey can take Dr. Page's deposition on Friday, March 14. Dey's only stated reason for not taking Dr. Page's deposition is that March 14 is after (i.e., one day after) the current close of expert discovery. As I explained during our telephone conversation, Dr. Page is traveling from the United Kingdom for his deposition in the Breath case that week and we are trying to avoid having Dr. Page make multiple trips to the United States.

Finally, I propose that we have another telephone conference Friday morning to discuss any outstanding expert deposition scheduling issues.

Very truly yours,



Preston K. Ratliff II
for PAUL, HASTINGS, JANOFSKY & WALKER LLP

cc: Via E-Mail

Jack B. Blumenfeld, Esq.
Steven J. Balick, Esq.